

C. Remarks

The claims are claim 1-12 and 14-17 with claim 1 being in independent form. Claim 13 has been cancelled, without prejudice or disclaimer of the subject matter presented therein. Claims 1, 5, 14 and 15 have been amended to define Applicants' invention more clearly. In particular, claims 1 and 15 have been amended to include the limitations of canceled claim 13, namely, that the outer dough layer is selected from the group consisting of a cracker, bread, cookie, muffin, granola, cereal, soft pretzel, and mixtures thereof. Claim 1 has also been amended to clarify that the base liquid comprises about 10 wt.% to about 30 wt.% glycerin and about 5 wt.% to about 25 wt.% corn syrup. Support for this amendment may be found, *inter alia*, in the illustrated examples and in paragraph [0036] of the specification. Claim 15 has also been amended to limit the shelf stable edible snack to that obtainable by the method of claim 1, which places specific compositional and structural requirements on the product. Claim 14 has been amended to clarify that the second liquid comprises flour, yeast, and water. Support for this amendment may be found, *inter alia*, in paragraph [0019] of the specification. No new matter has been added. Reconsideration of the claims is expressly requested.

The Examiner has rejected claims 6, 8 and 13 under 35 U.S.C. §112, second paragraph, as allegedly being indefinite. The grounds of rejection are respectfully traversed.

In particular, the Examiner has alleged that claim 6 is broader in scope than claim 1, from which it depends. Applicants respectfully disagree. Claim 1 recites an outer dough layer formed of an edible layered component obtained by coating the edible core with a base liquid and then applying a dry component. As described in paragraph [0007] of the specification, "The combination of the two components forms a layer of food over the edible core surface." Therefore, the dry component alone is not the outer dough layer. Claim 6 lists different

compositional characteristics of the dry component, and thus, is not broader in scope than claim 1. The Examiner has also alleged that the term “based” in claim 6 is unclear. “Based” in each of the claim 6 terms would be understood by one skilled in the art to mean that a majority of the dry component composition (> 50 wt.%) belongs to the indicated food ingredient category, namely, fat, dough, dairy, protein, grain, or mixtures thereof.

The Examiner has alleged that in claim 8, the phrase “at least a portion” is unclear. Claim 8 would be understood by one skilled in the art to mean that a portion of the total material that makes up the dry component is roasted. Whether the dry component is made up of a single ingredient or a mixture of ingredients, claim 8 indicates that some portion of the total material must be roasted.

The Examiner has alleged that claim 13 is unclear. The limitation of canceled claim 13, which has been included in currently amended claims 1 and 15, discloses that the outer dough layer obtained by the method of the invention may be more specifically crafted to be an item selected from the group consisting of a cracker, bread, etc. This does not alter the fact that the outer dough layer is obtained by layering liquid and dry components.

In view of the foregoing amendments and remarks, Applicants respectfully submit that the indefiniteness rejections of claims should be withdrawn.

Claims 1-3, 6, 9, 11, 12, 15 and 16 stand rejected under 35 U.S.C. §102(b) as allegedly being anticipated by U.S. Patent No. 5,433,961 (Lanner). Claims 1-4, 6, 11, 12, 15 and 16 stand rejected under 35 U.S.C. §102(b) as allegedly being anticipated by U.S. Patent No. 4,663,175 (Werner). Claims 5, 7, 8, 10, 13 and 17 stand rejected under 35 U.S.C. §103(a) as allegedly being obvious over Lanner. Claim 14 stands rejected under 35 U.S.C. §103(a) as allegedly being obvious over Lanner in view of U.S. Patent No. 5,149,562 (Hebert). Claims 7-

10 and 13 stand rejected under 35 U.S.C. §103 (a) as allegedly being obvious over Werner. Claim 14 stands rejected under 35 U.S.C. §103 (a) as allegedly being obvious over Werner in view of Hebert. The grounds of rejection are respectfully traversed.

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” MPEP § 2131 (citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)). Further, “Every element of the claimed invention must be literally present, arranged as in the claim.” *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 771-72, 218 USPQ 781, 789 (Fed. Cir. 1983). Consequently, unless all the elements of rejected claim are disclosed by the cited reference, a basis for an anticipation rejection does not exist.

Independent claim 1 as currently amended, in pertinent part, is directed to a method of making a shelf stable edible snack which comprises applying on the outer surface of an edible core a base liquid which comprises about 10 wt.% to about 30 wt.% glycerin and about 5 wt.% to about 25 wt.% corn syrup.

Lanner is directed to a continuous process for making non-aggregated edible cores which are uniformly coated with a crisp farinaceous material. Such a process involves forming a tumbling bed of edible core particles that are treated within the tumbling bed to form a dough coating. These dough-coated particles emerging from the tumbling bed are then cooked to form the desired coated products. However, in stark contrast to the base liquid of claim 1 as currently amended, and as acknowledged by the Examiner, Lanner does not disclose glycerin in a base liquid coating. Since Lanner fails to disclose all the claimed elements, this reference cannot support any anticipation rejection under 35 USC § 102(b). Consequently, Applicants respectfully submit that the anticipation rejection must be withdrawn.

Werner is directed to a flavored-nut product, made by coating nuts (or other centers) alternately with a liquid mixture (of water, sugar, and modified tapioca) and a solids mixture (of flour, modified corn starch, sugar and salt, with small amounts of flavoring, usually mixed with a small amount of vegetable oil), and each time permitting the solid portion to dry before the next additions of liquids. When the desired thickness of coating is obtained, usually after four to six repetitions, the liquid and solid multi-coated nuts are deep-fat fried. However, in stark contrast to the base liquid of claim 1 as currently amended, Werner does not disclose glycerin in a base liquid coating. Since Werner fails to disclose all the claimed elements, this reference cannot support any anticipation rejection under 35 USC § 102(b). Consequently, Applicants respectfully submit that the anticipation rejection must be withdrawn.

With regard to the obviousness rejections, neither Lanner nor Werner render obvious the claims as currently amended. As explained in the attached Declaration of Joan L. Schnieber (hereinafter “Schnieber Declaration”), the inventors have unexpectedly discovered that the combination of glycerin and corn syrup as plasticizers in the dough layer of the present invention is key to achieving a soft, breadlike texture with good flavor and stability against drying out. Even though glycerin is the better plasticizer, if only glycerin were used, it would impart a bitter flavor to the dough layer. On the other hand, if only corn syrup were used, it would result in the dough layer eventually drying out and could impart an undesirable flavor to the edible snack. Using a combination of the two plasticizers in the amounts claimed yields the best organoleptic properties and shelf life stability, which is an unexpected and surprising result. See ¶ 5 of the Schnieber Declaration and paragraph [0036] of the specification. As explained above, neither Lanner nor Werner disclose the use of glycerin in a base liquid coating, let alone

the synergistic effect of using a combination of glycerin and corn syrup in the claimed amounts in a base liquid coating.

Hebert does not remedy the deficiencies of Lanner or Werner. Hebert is directed to a process of preparing oil roasted nuts by roasting nuts, applying at least one uniform coating of an edible protein to the roasted nuts, and applying a coating of a seasoning mix to the coated nuts. Claim 14 as currently amended, recites that flour, yeast and water comprise the second liquid coating applied to the edible cores after a base liquid containing glycerin and corn syrup is first applied. Hebert does not suggest or disclose such coatings to produce a shelf stable edible snack.

For at least the reasons noted above, Applicants respectfully submit that Lanner and Werner, whether taken alone or in view of Hebert do not render obvious the above-presented claims. Applicants, therefore, respectfully request withdrawal of the § 103(a) rejections.

In view of the foregoing amendments and remarks, Applicants respectfully request favorable reconsideration and allowance of the claims in the present application. Should the Examiner believe that issues remain outstanding, the Examiner is respectfully requested to contact Applicants' undersigned attorney in an effort to resolve such issues and advance the case to issue.

Applicants' undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our below listed address.

Respectfully submitted,

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